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10/766,404	01/27/2004	Karl David McAllister	US20010207	3362
173 7590 05/04/2009 WHIRLPOOL PATENTS COMPANY - MD 0750 500 RENAISSANCE DRIVE - SUITE 102 ST. JOSEPH, MI 49085				
EXAMINER				
PERRIN, JOSEPH L				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**NOTICE OF NON-RESPONSIVE AMENDMENT**

***Response to Arguments***

1. Applicant's arguments filed 05 February 2009 have been fully considered but they are not persuasive.
2. Regarding claim 12, applicant argues that claim 12 as amended is "still generic to the elected sub-species, and were properly submitted under the species election." The Examiner disagrees. Claim 12 recites speed varying oscillations which varies according to a predetermined pattern. Specifically, the positive recitation of predetermined speeds of "a first oscillation speed and a second, different oscillation speed, in which the wash chamber is alternately operated at the first speed, then the second speed, then the first speed again and then the second speed again" is a recitation of the non-elected species of (VII)(d) and, as such, the predetermined first and second alternating speeds cannot be considered to be generic to speeds which "varies randomly" which is the elected species of (VII)(c). Applicant points to paragraphs 45, 46 and 50 to support the position that the speeds change randomly but such recitation is not commensurate in scope with the claimed invention. The predetermined pattern of claim 12 is considered to be drawn to the non-elected species of (VIII)(d) and not generic to the elected species of randomly varying speeds.
3. Similarly regarding claim 43, newly presented after the restriction requirement, the predetermined speeds of a "first rotational speed", a "second rotational speed faster than the first rotational speed", a "third rotational speed faster than a second rotational

speed", and a "fourth rotational speed faster than the third rotational speed" is clearly a predetermined pattern readable on the non-elected species of (VIII)(d) and, as such, said predetermined pattern cannot be construed to be generic to the elected species of (VIII)(c) where the oscillations vary randomly. Moreover, scope of newly introduced claim 43 does not appear to be adequately supported by the original disclosure as filed and appears to be new matter. Accordingly, the predetermined pattern of claim 43 is considered to be drawn to the non-elected species of (VIII)(d) and not generic to the elected species of randomly varying speeds.

4. Similarly regarding claim 47, newly presented after the restriction requirement, the predetermined pattern claimed reads on the non-elected species of (VIII)(d) and not the elected species of (VIII)(c). Moreover, scope of newly introduced claim 47 does not appear to be adequately supported by the original disclosure as filed and appears to be new matter.

5. Applicant is urged to amend the claims to read on the elected species indicated in the response dated 04 June 2007 and carefully review the amended claims so that no new matter is introduced. Applicant has not sufficiently shown clear support for such changes, and the Examiner notes that changing of scope of the claims with respect to the scope of the original disclosure as filed may constitute new matter as it appears in the instant case. Applicant should indicate with sufficient specificity where support for any newly introduced claim language exists while carefully avoiding any improper broadening of the scope of the original disclosure as filed.

6. Accordingly, the position is maintained that applicant's prior amendment has resulted in the withdrawal of all elected claims of the response dated 04 June 2007.

***Election/Restrictions***

7. The claims as amended (the previously presented claims of 05 February 2009 are the amended claims of 01 October 2008) effectively canceling (amending elected claims to read on non-elected claims) all claims drawn to the elected invention and present only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because the claims as amended read on fixed oscillating cycles and no longer read on varying and random cycles as originally elected in the response filed 04 June 2007. Moreover, applicant's arguments are not persuasive regarding the new matter because applicant points to broad and general examples of the specification which do not reasonably convey to one skilled in the art that applicant had possession of the claimed invention at time of filing of the specified claim limitations. Simply stated, pointing to a genus to support undisclosed species, basically as in the instant case, is considered new matter. Thus, the newly added language is still considered new matter. Applicant is urged to amend the claims to read on the elected invention in the response filed 04 June 2007 and remove the new matter in conformance with 35 USC § 112, first paragraph.

8. Since the above-mentioned amendment appears to be a *bona fide* attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the

omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph L. Perrin, Ph.D. whose telephone number is (571)272-1305. The examiner can normally be reached on M-F 8:00-4:30.
10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael E. Barr can be reached on (571)272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joseph L. Perrin/  
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Art Unit 1792